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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

ELF-MAN, LLC,

Plaintiff,

vs.

RYAN LAMBERSON,

Defendant.

No. 2:13-CV-0395-TOR

DEFENDANT LAMBERSON'S
FIRST AMENDED ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT; AND
COUNTERCLAIM

Defendant Ryan Lamberson, through his counsel Lee & Hayes PLLC, hereby submits this First Amended Answer, Affirmative Defenses and Counterclaim to plaintiff's First Amended Complaint and its corresponding numbered paragraphs as follows:

ANSWER OF DEFENDANT
RYAN LAMBERSON - 1

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INTRODUCTION

1. Defendant is without sufficient information to form a belief as to the truth of the averments in paragraph 1, and, on that basis, denies the same.

2. Admits paragraph 2.

3. Admits paragraph 3.

4. Admits that movie-watching is inexpensive, but denies the remaining averments of paragraph 4.

5. Denies paragraph 5.

6. Admits that a reality disconnect is a source of plaintiff's complaints, but denies the remaining averments of paragraph 6.

7. Denies paragraph 7. Defendant affirmatively states: Plaintiff's allegation of a perceived class-based, wide-scale, mass-social, misunderstood justification for the very acts it alleges as unlawful, if true, shows an awareness by plaintiff that certain media and distribution models are better than others if prophylactic protection and secure distribution of its works are desired, plus shows that plaintiff did not exercise due care under the known technological landscape to protect its work at the level it apparently seeks.

8. Denies paragraph 8.

1 9. Admits paragraph 9 except defendant denies that such use is
2 necessarily illegal.

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4 10. Denies paragraph 10.

5 **JURISDICTION AND VENUE**

6 11. Admits paragraph 11.

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8 12. Admits paragraph 12.

9 13. Admits paragraph 13.

10 **PARTIES**

11 **THE PLAINTIFF**

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13 14. Admits such a corporation was formed, and denies remaining
14 averments of paragraph 14. Defendant affirmatively states: The Maryland records
15 indicate Plaintiff Elf-Man, LLC was formed as a Maryland LLC #W14390330 on
16 November 11, 2011. Miranda Wideman signed as incorporator and, on information
17 and belief, Miranda Wideman was then employed by the incorporation-services
18 company Legal Zoom of Glendale, CA and signed as incorporator in furtherance of
19 her duties to Legal Zoom and its arrangements with the person or people who own
20 or operate Elf-Man, LLC. Elf-Man, LLC designates Richard Jeffries as registered
21 agent. An address of 7820 Wormans Mill Rd. Suite 222, Frederick MD 21701 is
22 listed. A current copy of the Maryland corporate records for plaintiff is attached as
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1 Exhibit 1. The Maryland records also indicate that Wiseacre Films LLC was
2 formed as a Maryland LLC #W14390322 on that same November 30, 2011. The
3 address, incorporator, and registered agent are the same. The address is the same.
4 A current copy of the Maryland corporate records for Wiseacre Films LLC is
5 attached as Exhibit 2. The movie trailer for *Elf-Man* identifies Wiseacre Films as
6 the motion picture's producer. Entertainment database IMDB lists both Wiseacre
7 Films LLC and Elf-Man LLC as the producers of *Elf-Man*. Neither Wiseacre Films
8 LLC nor Elf-Man LLC has a Certificate of Authority from the Washington State
9 Secretary of State as foreign LLCs to conduct business in the state of Washington.

13 The Rights of the Plaintiff

14 15. Denies paragraph 15. Defendant affirmatively states: A copy of the
15 U.S. Copyright Office webpage pertaining to plaintiff's purported copyright
16 registration PA-0001823286 is attached as Exhibit 3 ("the '286 Registration") with
17 an effective date of October 19, 2012. Exhibit 3 is not a certified copy of the '286
18 Registration from the U.S. Copyright Office; plaintiff has not submitted such a copy
19 as required to initiate a copyright action and to receive any of the legal presumptions
20 that a certificate may carry. Exhibit 3 identifies plaintiff as the copyright claimant
21 "by Transfer;" the associated '286 Registration indicates "by written agreement;" no
22 such agreement or transfer is made of record. Ex. 3 identifies plaintiff as the author
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1 by “employer for hire;” no such employment or work made for hire agreements are
2 made of record. The nature of authorship is listed as “direction/director,
3 script/screenplay,” and the basis of claim is “production as a motion picture.” The
4 deposit is described as “videodisc/DVD.” The pre-existing material excluded from
5 the copyright is listed as “preexisting footage, preexisting photograph(s), preexisting
6 music;” the associated ‘286 Registration includes “preexisting footage, preexisting
7 photograph(s), preexisting music” as “material excluded from this claim” in the
8 “Limitation of copyright claim” section. The title of the work is *Elf-Man*. There is
9 no recorded assignment of the ‘286 Registration. A second U.S. Copyright
10 Registration is relevant. Attached as Exhibit 4 is a copy of the U.S. Copyright
11 Office webpage pertaining to U.S. Copyright Registration PAu-003584737 (“the
12 ‘737 Registration.”) The ‘737 Registration issued to Ethan Jacob Wiley and
13 Richard Lynn Jeffries as co-authors. The title of the work is *Elf-Man*. The
14 registration effective date is November 3, 2011. The basis of the claim is “dramatic
15 work and music, or choreography.” The deposit is text. “Wiseacre Films” is listed as
16 the party to contact regarding “Rights and Permissions.” No pre-existing material is
17 disclaimed in the ‘737 Registration. There is no recorded assignment of the ‘737
18 Registration.
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1 16. Defendant is without sufficient information to form a belief as to the
2 truth of the averments in paragraph 16, and, on that basis, denies the same.
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4 Defendant affirmatively states: The '286 Registration (Ex. 3) expressly
5 acknowledges use of three categories of pre-existing materials which are not the
6 subject of the registration. No additional guidance is provided by plaintiff to the
7 U.S. Copyright Office as to which aspects of its deposit are its copyrightable
8 authorship and which aspects of its deposit are the disclaimed pre-existing material.
9 The '286 Registration contains no reference to the earlier '737 Registration.
10 Defendant denies that the piece of the *Elf-Man* allegedly represented by hash
11 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72 is sufficiently
12 original, fixed, or humanly perceptible so as to be copyrightable under 17 U.S.C.
13 Section 102.
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17 17. Admits paragraph 17. Defendant affirmatively states: *Elf-Man* was
18 first released to the public on December 4, 2012, and *Elf-Man* was not in contractual
19 limited release in the United States prior to November 20, 2012. *Elf-Man* is
20 available for DVD purchase for \$6.49 as of December 17, 2013, or for no marginal
21 cost over a Netflix account such as the type held by Mr. Lamberson's household.
22
23

24 18. Denies paragraph 18. Defendant affirmatively states: Vision Films,
25 Inc. of Sacramento CA claims to be the owner of all exclusive rights in *Elf-Man* as
26

1 claimed in paragraph 30 of its Complaint *Vision Films, Inc. v. John Does 1-41*, Case
2 No. 3:13-cv-00128, filed in the Eastern District of Tennessee on March 8, 2013
3 (Exhibit 5).
4

5 19. Denies paragraph 19. Defendant affirmatively states: The owners of
6 Exhibit 4, Messrs Wiley and Jeffries, may be the owners of the authorship
7 purportedly transmitted during the timeframes of plaintiff's allegations, and thus
8 may be necessary and indispensable parties. Exhibit 4 also identifies Wiseacre Films
9 as the party to contact regarding rights and permissions, and Wiseacre Films is
10 identified as a producer of the work who thus may have ownership of copyrights in
11 the work. On information and belief, plaintiff has assigned exclusive United States
12 distribution rights and/or all exclusive rights under its copyright to Anchor Bay
13 Entertainment (aka Starz Media LLC) and/or Vision Films, Inc. known distributors
14 of direct-to-DVD productions such as *Elf-Man*, who also thus may be necessary and
15 indispensable parties as owners of exclusive rights under 17 U.S.C. Section 106.
16 The *Elf-Man* trailer identifies Vision Films as the distributor, and Anchor Bay
17 Entertainment's website includes *Elf-Man* among its distributed titles. The table of
18 alleged copying of hash piece
19 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72 submitted by plaintiff
20 to the Eastern District of Missouri (Exhibit 12 hereto) identifies Vision Films as the
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rights holder. The IMDB lists numerous individual producers and executive producers who may have made copyrightable contributions to *Elf-Man* not assigned to plaintiff. Any and all of these third parties who own exclusive rights under 17 U.S.C. Section 106 in or to *Elf-Man* and/or the material represented by hash piece SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72 are necessary and indispensable parties not joined by plaintiff in this action.

20. Admits paragraph 20.

21. Denies paragraph 21. Defendant affirmatively states: No such notice was publicly available at the time of the allegations against Defendant.

THE DEFENDANTS

In General

22. Denies paragraph 22.

23. Denies paragraph 23. Defendant affirmatively states: Any such use, if true, was under license from plaintiff who knowingly released its work into the bit torrent environment.

24. Denies paragraph 24. Defendant affirmatively states: Plaintiff's allegations comprise an improper legal conclusion, unsupported by factual allegations.

25. Admits paragraph 25.

1 26. Denies paragraph 26. Defendant affirmatively states: The unique
2 “hash” number is tied to one “piece” (aka bit or block) of the original work. Each
3 piece has a unique hash identifier, and each motion picture is divided into numerous
4 differently-valued hash pieces when the original seeder introduces its original
5 version/copy into bit torrent. Each hash piece is a small file containing humanly-
6 imperceptible coded programming information, plus the code for the one small
7 piece of the original humanly-perceptible work. The unique hash number is not
8 “confirmed as being for an unauthorized copy of Plaintiff’s motion picture” as
9 plaintiff alleges in paragraph 26 – the hash number is associated with a piece.
10 Plaintiff’s Complaint in the District of Colorado more accurately defines the hash at
11 paragraph 21: “The [bit torrent software] Client then gives each one of the computer
12 file’s pieces, in this case, pieces of the copyrighted Work, a random and unique
13 alphanumeric identifier known as a ‘hash’ and records these hash identifiers in the
14 torrent file.” Ex. 6). These hash pieces are the “bit” of bit torrent – and the “torrent”
15 files are an index of the hash pieces needed and their relative order to re-create the
16 entire work, as well as a route to finding the pieces. The size of the hash piece
17 depends on which bit torrent client is used by the original seeder. A standard bit
18 torrent hash piece size is 2 to the 18th power in bite size, approximately 256,000
19 bites (only a portion of which 256,000 bites is allocated to the perceptible work, the
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1 remainder allocated to programming preferences and relational data) – a size that
2 equates to considerably less than one second of audio visual material – a blink of an
3 eye. Other bit torrent clients may have a hash piece size with a range down in size
4 to 2 to the 15th power in size or up to 2 to the 20th power in size – creating an overall
5 approximate range of audio visual material per hash piece from an imperceptible
6 0.01 seconds to 1 second. Plaintiff has made the representation in its First Amended
7 Complaint in paragraphs 24 and 83 (both including legal conclusions improperly
8 pled) that defendant has somehow copied the entire motion picture during the one-
9 second of its chart, despite plaintiff's actual knowledge that its own evidence shows
10 activity only with respect to one piece designated by one hash –
11 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72, perhaps an
12 imperceptible piece – and not the entire motion picture as alleged. No known
13 technology is available to residential consumers that allows the digital transmission
14 or reproduction of a motion picture with an 80-90 minute run time like *Elf-Man* in
15 one second or less. Plaintiff does not allege copying by Mr. Lamberson of anything
16 other than the hash piece
17 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72 on 12/2/2012 at
18 4:39:20pm and plaintiff does not allege the originality, ownership, or
19 copyrightability of the work represented by that hash piece.
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Identification of the Named Defendants

27. No response necessary.

28. No response necessary.

29. No response necessary.

30. No response necessary.

31. No response necessary.

32. No response necessary.

33. No response necessary.

34. No response necessary.

35. No response necessary.

36. No response necessary.

37. No response necessary.

38. No response necessary.

39. No response necessary.

40. No response necessary.

41. No response necessary.

42. No response necessary.

43. No response necessary.

44. No response necessary.

1 45. No response necessary.

2 46. No response necessary.

3 47. No response necessary.

4 48. No response necessary.

5 49. No response necessary.

6 50. No response necessary.

7 51. No response necessary.

8 52. No response necessary.

9 53. No response necessary.

10 54. No response necessary.

11 55. No response necessary.

12 56. No response necessary.

13 57. No response necessary.

14 58. No response necessary.

15 59. No response necessary.

16 60. No response necessary.

17 61. No response necessary.

18 62. No response necessary.

19 63. No response necessary.

1 64. No response necessary.

2 65. No response necessary.

3 66. No response necessary.

4 67. No response necessary.

5 68. No response necessary.

6 69. No response necessary.

7 70. No response necessary.

8 71. No response necessary.

9 72. No response necessary.

10 73. No response necessary.

11 74. No response necessary.

12 75. No response necessary.

13 76. No response necessary.

14 77. No response necessary.

15 78. No response necessary.

16 79. No response necessary.

17 80. No response necessary.

18 81. Defendant is without sufficient information to form a belief as to the
19 truth of the averments in paragraph 81, and, on that basis, denies the same.
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1 82. Admits paragraph 82.

2 83. Denies paragraph 83. Defendant affirmatively states: The allegation
3
4 that Mr. Lamberson was “observed infringing” for one second at “04:39:20 p.m.” on
5 12/2/2012 is a legal conclusion improperly pled. The date and time are presumably
6 UTC (universal computer time – Greenwich, England time, but kept in permanent
7
8 standard time), so perhaps “08:39:20 a.m. Pacific Standard Time” on 12/2/2012 was
9 intended. Both of these times and dates are prior to the first public release of
10 plaintiff’s work.
11

12 84. No response necessary.

13 85. No response necessary.

14 86. No response necessary.

15 87. No response necessary.

16 88. No response necessary.

17 89. No response necessary.

18 90. No response necessary.

19 91. No response necessary.

20 92. No response necessary.

21 93. No response necessary.

22 94. No response necessary.

1 95. No response necessary.

2 96. No response necessary.

3 97. No response necessary.

4 98. No response necessary.

5 99. No response necessary.

6 100. No response necessary.

7 101. No response necessary.

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9
10 **Further Identification of the Remaining Doe Defendants**

11
12 102. No response necessary.

13 **JOINDER**

14 103. Denies paragraph 103.

15 104. Denies paragraph 104.

16
17 105. Denies paragraph 105, other than admitting that the same hash piece
18 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72 is common to all
19 copyright infringement claims brought in multiple actions in multiple United States
20 District Courts by plaintiff; no other hash pieces are alleged to have been infringed.
21
22 On information and belief, hash piece
23 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72 was initially
24 introduced into the bit torrent environment by plaintiff and/or its agents or privies.
25
26

1 106. Denies paragraph 106.

2 107. Denies paragraph 107.

3 108. Admits paragraph 108.

4
5 **FACTS COMMON TO ALL CLAIMS**

6 **IP Addresses**

7
8 109. Admits paragraph 109.

9 110. Denies paragraph 110. Defendant affirmatively states: IP addresses are
10 temporarily assigned to devices, not people. IP addresses are not account numbers.
11 ISP customers have no control over the assignment or re-assignment of IP addresses
12 that its ISP may use or change for devices owned by or leased to its customer.

13
14 111. Denies paragraph 111.

15 112. Denies paragraph 112.

16
17 113. Denies paragraph 113. Defendant affirmatively states: Plaintiff's
18 apparent knowledge of piracy and the use of the internet to conduct purported illegal
19 activity show an awareness by plaintiff that certain media and distribution models
20 are better than others if prophylactic protection and secure distribution of its works
21 are desired, plus show that plaintiff did not under the known technological
22 landscape exercise due care to protect its work at the level it apparently seeks.
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Peer-to-Peer Internet Piracy Via Bit Torrent

114. Defendant is without sufficient information to form a belief as to the truth of the averments in paragraph 114, and, on that basis, denies the same.

115. Denies paragraph 115.

116. Admits paragraph 116.

117. Admits paragraph 117.

118. Denies paragraph 118.

119. Admits paragraph 119. Defendant affirmatively states: Plaintiff has filed no lawsuits against any commercial client application software vendors for direct or contributory infringement.

120. Admits paragraph 120. Defendant affirmatively states: Plaintiff has filed no lawsuits against any commercial torrent sites for direct or contributory infringement. Torrent files for the very version of *Elf-Man* alleged to have been infringed by plaintiff have been and are being offered on the leading torrent file website, Pirate Bay.

121. Admits paragraph 121. Defendant affirmatively states: torrent files identify the numerous pieces of which the original entire work as seeded is composed and the associated hash value of the numerous pieces. Plaintiff has filed

1 no lawsuits against any commercial torrent file or tracker software vendors for
2 direct or contributory infringement.

3
4 122. Admits paragraph 122.

5 123. Admits paragraph 123.

6 124. Admits paragraph 124. Defendant affirmatively states: Plaintiff has
7
8 filed no lawsuits against any of these commercial entities, bringing its actions only
9 against individual John and Jane Does who may be entirely innocent even if they
10 did download a piece of the film or the entire film – for example, a child’s copying
11 and viewing as research for a school project on elf-based holiday movies of the 21st
12 century would be non-infringing fair use under 17 U.S.C. Section 107, even if the
13 copyright holder disapproved. On information and belief, plaintiff and/or its agents
14 and privies have been and are seeding *Elf-Man* onto the very peer-to-peer networks
15 it claims are responsible for facilitating the defendant’s infringement, and they are
16 perpetuating the existence and availability of *Elf-Man* on these peer-to-peer
17 networks. Plaintiff’s barratrous business model needs the infrastructure of peer-to-
18 peer in order to work: seeding its own work onto peer-to-peer networks, maintaining
19 the viability of the work on these networks, all to generate peers with visible IP
20 addresses that can be harvested by capturing one-second snapshots, which are then
21 churned into summonses, settlements, and default judgments – without any
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1 concomitant actions using the DMCA takedown procedures or any lawsuits against
2 any commercial provider (or initial seeder or perpetual peer) in the peer to peer
3 chain who is facilitating the alleged infringement. In other words, one of the torrent
4 site profiteers of paragraph 124 is plaintiff.

6 125. Denies paragraph 125. Defendant affirmatively states: Plaintiff has
7 filed no lawsuits against any such parties alleged to be accepting monies for access
8 to its works for direct or contributory infringement.

10 126. Denies paragraph 126. "Torrent file" was likely more accurately
11 defined by plaintiff's paragraph 121. The averments of paragraph 126 presumably
12 refer to one of the pieces of the work as divided when seeded, each piece (aka bit or
13 block) assigned a hash value.

15 127. Defendant is without sufficient information to form a belief as to the
16 truth of the averments in paragraph 127, and, on that basis, denies the same.

18 128. Defendant is without sufficient information to form a belief as to the
19 truth of the averments in paragraph 128, and, on that basis, denies the same.
20 Defendant affirmatively states: Plaintiff has filed no lawsuits against any such Peer
21 Exchange software vendors for direct or contributory infringement.

23 129. Defendant is without sufficient information to form a belief as to the
24 truth of the averments in paragraph 129, and, on that basis, denies the same.
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1 Defendant affirmatively states: Plaintiff has filed no lawsuits against any such
2 Distributed Hash Table software vendors for direct or contributory infringement.

3
4 130. Denies paragraph 130.

5 131. Defendant is without sufficient information to form a belief as to the
6 truth of the averments in paragraph 131, and, on that basis, denies the same.

7
8 132. Defendant is without sufficient information to form a belief as to the
9 truth of the averments in paragraph 132, and, on that basis, denies the same.

10 Defendant affirmatively states: Not all identifiable users in any swarm are either
11 downloading or uploading any pieces at any one time. Plaintiff makes no allegations
12 that defendant was downloading or uploading at 04:39:20pm UTC on 12/2/2012.

13
14 133. Denies paragraph 133.

15
16 134. Denies paragraph 134.

17 135. Denies paragraph 135. Defendant affirmatively states: On information
18 and belief, the hash piece
19 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72 allegedly copied by
20 the defendant was knowingly placed into the alleged cascade of infringement by the
21 plaintiff, its contract partners, agents and/or privies.
22

23
24 136. Denies paragraph 135.

25 **Conduct of Defendants**
26

1 137. Denies paragraph 137.

2 138. Denies paragraph 138.

3 139. Denies paragraph 139.

4 140. Denies paragraph 140.

5 141. Denies paragraph 141. Defendant affirmatively states: Plaintiff has
6 assigned its distribution rights and thus does not have any rights to prohibit the
7
8 allegations of this paragraph.
9

10 142. Denies paragraph 142.

11 143. Denies paragraph 143.

12 144. Denies paragraph 144.

13 145. Denies paragraph 145.

14 146. Denies paragraph 146.

15
16
17 **Exemplar Defendant**

18 147. Defendant is without sufficient information to form a belief as to the
19 truth of the averments in paragraph 147, and, on that basis, denies the same.
20

21 148. Denies paragraph 148. Defendant affirmatively states: the hash value
22 recited is for a piece of the work, not for the entire motion picture. The torrent file
23 purportedly described in paragraph 121 is the file that indexes and organizes all of
24 the various pieces created by the original uploader seeding the work into bit torrent.
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1 149. Denies paragraph 149.

2 **CLAIMS FOR RELIEF STATED IN THE ALTERNATIVE**

3 **FIRST CLAIM FOR RELIEF**

4 **COPYRIGHT INFRINGEMENT**

5 150. No response necessary.

6 151. Denies paragraph 151.

7 152. Denies paragraph 152.

8 153. Denies paragraph 153.

9 154. Denies paragraph 154.

10 155. Denies paragraph 155.

11 156. Denies paragraph 156.

12 157. Denies paragraph 157.

13 158. Denies paragraph 158.

14 **SECOND CLAIM FOR RELIEF**

15 **CONTRIBUTORY INFRINGEMENT**

16 159. No response necessary.

17 160. Denies paragraph 160.

18 161. Denies paragraph 161.

19 162. Denies paragraph 162.

1 163. Denies paragraph 163.

2 164. Denies paragraph 164.

3 165. Denies paragraph 165.

4 166. Denies paragraph 166.

6 **THIRD CLAIM FOR RELIEF**

7 **Alternative Statement Pursuant to FRCP 8(2)(b)**

8 **Indirect Infringement of Copyright**

9 167. No response necessary.

10 168. Denies paragraph 168.

11 169. Denies paragraph 169.

12 170. Denies paragraph 170.

13 171. Denies paragraph 171.

14 172. Denies paragraph 172.

15 173. Denies paragraph 173.

16 174. Denies paragraph 174.

17 175. Denies paragraph 175.

18 176. Denies paragraph 176.

19 **DAMAGES**

20 177. Denies paragraph 177.

Notice of Further Claims

178. No response necessary.

179. No response necessary.

180. Denies paragraph 180.

AFFIRMATIVE DEFENSES

As Affirmative Defenses, Defendant alleges:

1. Plaintiff has failed to state a claim upon which relief may be granted.

2. Plaintiff's copyright at issue is invalid and unenforceable.

3. The piece of plaintiff's purported work allegedly copied, and represented by hash SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72, is not sufficiently original, fixed, or humanly perceptible to be the subject of copyright.

4. Plaintiff does not submit its purported Certificate of Registration as required for subject matter jurisdiction and any presumptions under the Copyright Act.

5. Third-parties known to plaintiff are the authors and owners of pre-existing material expressly exempted from plaintiff's copyright in suit.

6. Third-parties known to plaintiff are the owners of exclusive rights under the copyright in suit.

1 7. Necessary and indispensable parties known to plaintiff are not joined.

2 8. Plaintiff's claims are barred by fair use under 17 U.S.C. § 107.

3 9. Plaintiff's claims are barred by the archival rights under 17 U.S.C.

4
5 Section 117(a).

6 10. Plaintiff's claims are barred by estoppel.

7 11. Plaintiff's claims are barred by unclean hands.

8 12. Plaintiff's claims are barred by waiver.

9 13. Plaintiff's claims are barred by barratry.

10 14. Plaintiff claims are barred by license, express or implied.

11 15. Plaintiff has failed to mitigate damages.

12 16. Plaintiff's damages are caused by its own actions or those of its privies.

13 17. Plaintiff's claims are barred by misuse of copyright.

14 18. Plaintiff's claims for statutory damages are excessive and
15 disproportionate to any actual damages.

16 19. Plaintiff's claims for statutory damages are barred under 17 U.S.C. 504
17 (c)(1) because plaintiff has already been compensated for the work at issue by one
18 of the original co-defendants in the combined action from which this case was
19 severed.
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1 20. Plaintiff is not entitled to injunctive relief because any alleged injury is
2 not irreparable, and plaintiff has an adequate remedy at law.

3
4 21. Plaintiff's claims are barred by *de minimus non curat lex* (the law cares
5 not for a trifle.)

6 22. Plaintiff's claims are barred by *de minimus* use.

7
8 23. Plaintiff's claims are the result of an inadequate investigation of the
9 facts and an inadequate analysis of the controlling law, both in violation of Fed. R.
10 Civ. P. 11. Procedural pre-requisites for the application of Fed. R. Civ. P. 11 have
11 been satisfied.

12
13 24. Plaintiff's Third Claim for Relief is captioned "Indirect Infringement of
14 Copyright," but neither the Copyright Act nor the controlling authority recognizes
15 such a cause of action.

16
17 25. Plaintiff's claims sounding in tort or contract are pre-empted by the
18 United States Copyright Act, 17 U.S.C. § 301.

19
20 26. Plaintiff is not a third-party beneficiary entitled to any specific
21 performance under any contracts between defendant and his internet service
22 provider.

23
24 27. Defendant did not download *Elf-Man*. Defendant has no knowledge
25 that anyone downloaded *Elf-Man* using his computer or internet service. Defendant
26

1 has no connection, association, control, or financial relationship with anyone who
2 might have downloaded *Elf-Man* using his computer or internet service. Plaintiff
3 has refused to examine evidence voluntarily presented to it by defendant on all of
4 these facts. If, somehow, defendant is liable for copyright infringement, defendant is
5 an innocent infringer as he was not aware of, and had no reason to believe his acts
6 constituted infringement.
7

8
9 28. Plaintiff is not authorized to conduct business in the State of
10 Washington and its barratrous litigation business model is void *ab initio*.
11

12 29. Plaintiff is not adequately capitalized to meet the liability caused by its
13 unlawful business scheme and thus is operating as the *alter ego* of its yet
14 unidentified principals, and all relief sought herein is sought from plaintiff and such
15 principals. Plaintiff should be required to post a bond sufficient to meet an award of
16 defense attorneys fees against it.
17

18 **COUNTERCLAIMS**

19
20 As Counterclaims against Plaintiff, Defendant alleges as follows:

21 1. Counterclaim-plaintiff Ryan Lamberson is a single man and single
22 father. At the time in question, he lived in a two bedroom apartment in Spokane
23 County with a male roommate who also is a single father. Mr. Lamberson has
24 maintained an internet account (including telephone and television) from Comcast
25
26

1 over the relevant time frame. He has faithfully paid on his account and has not been
2 denied service for any breach of terms. Mr. Lamberson's household has a Netflix
3 account from which he could rent *Elf-Man* for no marginal cost. Mr. Lamberson
4 has no financial or control relationship with any known infringer of *Elf-Man*.
5

6 2. Counterclaim-defendant Elf-Man, LLC is the plaintiff hereunder.
7

8 3. The Court has subject matter jurisdiction over these counterclaims
9 under the Copyright Act, the Declaratory Judgments Act, 28 U.S.C. Sections 2201-
10 2202, and by supplemental jurisdiction.
11

12 4. Venue is proper in this district because the plaintiff has consented to
13 this district and the effects of its unlawful activities are felt in this district.
14

15 5. Elf-Man, LLC was formed on November 11, 2011. To the extent that
16 *Elf-Man* the motion picture is a copyrightable work, Elf-Man, LLC can only be the
17 "author" of that work if its W-2 employees and only those employees created the
18 work, and/or if everyone making a copyrightable contribution to *Elf-Man* each
19 executed a written and signed, valid work-made-for-hire agreement with Elf-Man,
20 LLC in compliance with 17 USC Sections 101 and 201. Elf-Man, LLC could also
21 be the "owner" of the copyright by written assignment, executed by the author.
22 Plaintiff has alleged no such authorship relationships or assignment relationships,
23
24
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26

1 nor submitted into the record any of the associated documentation required to create
2 such relationships.

3
4 6. Wiseacre Films LLC was also formed on November 11, 2011. The
5 trailer for *Elf-Man* shows Wiseacre Films as the principal producer. The well-known
6 movie database IMDB shows both Elf-Man, LLC and Wiseacre Films, LLC as
7 producers of *Elf-Man*. Plaintiff's facebook page for the motion picture indicates that
8 Wiseacre Films, LLC is a producer. IMDB also lists the following other producers:
9 Jason Acuña, Russell Denove, Richard Jefferies, Lise Romanoff, Melissa Skoff,
10 Alan Somers, Kurt Uebersax, and Chris Walas. On information and belief, plaintiff
11 may not have employed each of these individuals who may have made a
12 copyrightable contribution, and it may not have an executed work made for hire or
13 assignment agreement with each of them. Consequently, each such producer who
14 was not so employed or who did not have an executed work made for hire or
15 assignment agreement, retains ownership of his or her exclusive rights as may apply
16 to the subject of hash piece
17 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72.
18
19

20
21
22 7. Messrs Wiley and Jeffries were the writers of *Elf-Man* and submitted
23 and own the '737 Registration that is Exhibit 4. On information and belief, they
24 have not assigned their rights to Elf-Man, LLC as to the subject of hash piece
25
26

1 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72 and thus retain their
2 exclusive rights as to that material.

3
4 8. Elf-Man, LLC owns the '286 Registration but it contains express
5 Limitations, including to pre-existing footage, pre-existing photographs, and pre-
6 existing music, all admitted to be contained within the work. In addition, the '286
7 Registration cannot provide copyright protection for humanly-imperceptible
8 portions of works.
9

10 9. Elf-Man, LLC on information and belief assigned exclusive
11 distribution rights in *Elf-Man* to Vision Films, Inc. and/or Anchor Bay
12 Entertainment; consequently, plaintiff does not own the distribution rights under the
13 '286 Registration. Vision Films represents to the Eastern District of Tennessee that
14 it is the owner of all exclusive rights (including the reproduction and distribution
15 rights) in *Elf-Man* including the right to sue for infringement. (Ex. 5, paragraph 30.)
16
17

18 10. *Elf-Man* debuted in Frederick, Maryland, the town where the Wiseacre
19 Films facilities are located. The motion picture was initially publicly shown at a
20 local film event on Saturday December 1, 2012; there have been no other reported
21 public showings of *Elf-Man*, which did not have a theatrical release. Copies of *Elf-*
22 *Man* were not distributed at the December 1, 2012 public showing in Maryland.
23
24 *Elf-Man* was first publicly distributed on DVD on Tuesday December 4, 2012 and
25
26

1 also first publicly released to video-on-demand services on December 4, 2012.
2 There is no other known earlier distribution of the work other than a reference in an
3 interview by Mr. Ubersax of a pre-release to the Redbox service two weeks prior to
4 December 4, 2012, which is Tuesday November 20, 2012. The claimed August 1,
5 2012 “date of first publication” on the ‘286 Registration is incorrect, perhaps a
6 mistake made by improperly designating an internal, pre-publication, completion of
7 some milestone in the *Elf-Man* project like sending a final edition of the work to the
8 distributor.
9

10
11
12 11. Plaintiff has brought at numerous lawsuits against John Does alleging
13 copyright infringement by users of peer-to-peer networks. Despite plaintiff’s
14 apparent forensic software, plaintiff has never alleged that it has determined the IP
15 address of the original source of the unique hash piece
16 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72, nor do any of the
17 John Doe cases allege that any of the John Does are the original source of the
18 unique hash piece. Plaintiff has brought no lawsuits making direct accusations
19 against an individual or organization of initially seeding the work into bit torrent,
20 creating the unique hash piece
21 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD7. For example,
22 plaintiff has brought no lawsuits against any of plaintiff’s privies who may have
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1 violated the pre-release confidentiality obligations of a contract with plaintiff
2 regarding a version of *Elf-Man* to which the privy had pre-release access. Plaintiff
3 has brought no lawsuits against any software providers of any aspects of peer-to-
4 peer, nor against any owners or operators of websites where peer-to-peer links to
5 *Elf-Man* can apparently be found. On information and belief, plaintiff has issued no
6 takedown notices under the Digital Millennium Copyright Act (“DMCA”), an act
7 expressly designed to facilitate copyright owners removing infringements of their
8 works from the internet. DMCA takedown notices are a standard part of any
9 legitimate anti-piracy campaign.

12 12. Plaintiff’s lawsuits against John Does include the following nine:

- 13 a. District of Oregon: Case No. 6:2013-cv-00331
- 14 b. District of Oregon: Case No. 1:2013-cv-00333
- 15 c. District of Oregon: Case No. 2:2013-cv-00334
- 16 d. Eastern District of Washington: Case No. 2:2013-cv-00115
- 17 e. Western District of Washington: Case No. 2:2013-cv-00507
- 18 f. Eastern District of Missouri: Case No. 4:2013-cv-00576
- 19 g. Northern District of Illinois: 1:2013-cv-02362
- 20 h. Northern District of Ohio: 1:2013-cv-00727
- 21 i. Southern District of Ohio: 2:2013-cv-00308

1 13. The Complaints in each of the nine matters are brought by Elf-Man,
2 LLC as the sole plaintiff, claim copyright ownership in *Elf-Man*, and proceed
3 against a group of John Does, seeking subpoenas leading to service of the
4 Complaints on individual ISP subscribers such as Mr. Lamberson. None of these
5 nine cases has proceeded to a successful trial nor resulted in any summary judgment
6 in favor of the plaintiff. Multiple Defaults have now been entered against served
7 defendants, including in the combined case from which Mr. Lamberson's matter
8 was severed, for example, the Defaults now entered against Andrew Lint, Brenda
9 Barnett, Dean Barnett, Rafael Torres, Carlos Rodriguez, Stephanie Housden, and
10 Shannon Williams.

14 14. None of the nine Complaints are verified by Elf-Man, LLC, its
15 principals, nor any other witness. Each of the nine Complaints attaches a table of
16 typed, organized data – also not verified. In Mr. Lamberson's case, the table is not
17 attached or incorporated in the First Amended Complaint (ECF #3), but it is
18 attached to the original Complaint (ECF #1) as (ECF #1-1), although no witness
19 verifies the data or provides any foundational testimony for it. The data from the
20 tables is not a matter of known public record nor an ordinarily-kept business record.
21 The table of data in each case includes the number of a John Doe, a purportedly-
22 related IP address, a one-second time and date (sometimes denoted as UTC,
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26

1 sometimes not), and reference to the hash
2 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72.
3

4 15. In a customary case of alleged piracy, the distribution copyright holder
5 investigates and issues take down notices to websites indexing the copyright
6 holder's works. The websites are then provided legal safe harbors for taking their
7 subscriber's links down where there is no fair use, license, or other reason to retain
8 the link. Those links originate with seeders who initially upload a work through the
9 bit torrent protocol to be broken into hash-valued pieces indexed into a link
10 accessible by others operating compatible protocols. Seeders may be "super-fans"
11 of the work, who have a desire to comment and criticize on the work and who might
12 be fairly using and enhancing the demand for the legitimate work. The seeders may
13 also be commercial profiteers operating in violation of the law as plaintiff alleges.
14
15
16

17 16. Plaintiff is one of those commercial profiteers operating in violation of
18 the law. The table from each Complaint is attached hereto and incorporated herein:
19

- 20 a. District of Oregon: Case No. 6:2013-cv-00331 (Ex. 7).
21 b. District of Oregon: Case No. 1:2013-cv-00333 (Ex. 8).
22 c. District of Oregon: Case No. 2:2013-cv-00334 (Ex. 9).
23 d. Eastern District of Washington: Case No. 2:2013-cv-00115 (Ex. 10).
24 e. Western District of Washington: Case No. 2:2013-cv-00507 (Ex. 11).
25
26

1 f. Eastern District of Missouri: Case No. 4:2013-cv-00576 (Ex. 12).

2 g. Northern District of Illinois: 1:2013-cv-02362 (Ex. 13).

3 h. Northern District of Ohio: 1:2013-cv-00727 (Ex. 14).

4 i. Southern District of Ohio: 2:2013-cv-00308 (Ex. 15).

5 j. The table from the Vision Films case in the Eastern District of
6 Tennessee 3:13-cv-00128 (Ex. 16)
7

8
9 17. Each of the attached tables shows at least one alleged transfer of the
10 hash piece prior to December 4, 2012 (05:00 UTC) – this includes the Tennessee
11 case where Vision Films is the plaintiff, and which includes alleged infringement on
12 December 2, 2012 and December 3, 2012, dates identical to those in the ED WA
13 case brought by Elf-Man, LLC. *Elf-Man* was not officially released to the public
14 through DVD or streaming technology until Tuesday December 4, 2012. The tables
15 for Ex. 7 and Ex. 9 show transfer of the hash piece prior to November 20, 2012
16 (05:00 UTC), the apparent Redbox pre-release of *Elf-Man*. Each of the tables
17 (including the Tennessee case) shows the identical hash, thus, each has the same
18 seed origin. That seed origin for that hash piece was prior to any known public
19 showing or public distribution of the motion picture. On information and belief,
20 that seed origin is with the plaintiff, or its German investigator, agents, or privies.
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1 18. None of the tables shows any alleged transfer of the hash piece prior to
2 October 19, 2013, the effective date of Elf-Man, LLC's copyright application for the
3 '286 Registration.
4

5 19. Elf-Man on information and belief uses no level of technological
6 measure greater than a standard level of protection for a direct-to-DVD motion
7 picture.
8

9 20. On information and belief, Elf-Man LLC utilizes a standard level of
10 protection for its un-published works, including relationships with third-parties who
11 may have access to the work prior to its public release requiring those parties to
12 respect the public release dates of the un-published works. The movement of *Elf-*
13 *Man* after its production and prior to its public release may account for the
14 inaccurately claimed August 1, 2012 date of first publication alleged in plaintiff's
15 copyright application.
16
17

18 21. On information and belief, plaintiff, its contractual parties, agents,
19 and/or privies first seeded its work to bit torrent prior to its public release for the
20 express purpose of a dragnet copyright infringement enforcement business model,
21 leveraging the mandatory statutory damages applicable to those with prompt
22 copyright registration certificates while ignoring the license and waiver implications
23 of its seeding.
24
25
26

1 22. Statutory damages are only available if the copyright holder promptly
2 registers its copyright or before the acts of infringement. 17 U.S.C. Section 412.
3
4 The effective date of the '286 Registration is October 19, 2012. The earliest noted
5 passing of a hash piece from any of the evidence submitted in any of the nine cases
6 is November 19, 2012. The public release date of the DVD was December 4, 2012,
7
8 with an apparent limited pre-release to Redbox on November 20, 2012.

9 23. Technology is available to determine the IP address of the original
10 seeder of a work onto bit torrent, see, for example, the Declaration of Delvan
11 Neville, attached as Exhibit 17 (irrelevant adult film references redacted) in the case
12 of *First Time Videos, LLC, v. Oppold*, (Case No.: 6:12-cv-01493-CEH-KRS,
13 Middle District of Florida) tracing the original seeding of the work at issue in that
14 case to the copyright owner in that case and or its agents. Regrettably, Mr.
15 Lamberson is not in a financial position to hire the services of an expert like Mr.
16 Neville, so it will need to rely on plaintiff's honesty in the discovery process to
17 reveal the identity of the initial seeder and/or hope the expert can take the case for
18 the principle of exposing other plaintiffs operating these barratrous "honeypots."
19
20 The plaintiff's own evidence shows activity of the hash piece prior to any public
21 release of the work, indicating the initial seeder must have been plaintiff or one of
22
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1 its privies, none of whom plaintiff has sued for copyright infringement or breach of
2 contract.

3
4 24. Even if the plaintiff itself did not seed the hash at issue, it is
5 responsible for the seeding, because it otherwise must have directed the seeding by
6 an agent, or it failed to exercise due care with its contractual parties, assignees,
7 suppliers, or vendors with respect to the unpublished work prior to the public
8 release of *Elf-Man*.

9
10 25. Plaintiff purposefully released *Elf-Man* into the bit torrent environment
11 knowing, authorizing, and inviting its copying and distribution. There is no
12 evidence that Mr. Lamberson or any of the other John Does in any of the cases was
13 the seeder of the hash piece at issue.

14
15 26. Plaintiff has also used investigative methods that are known to lead to
16 “false positives” and are not calculated to lead to the true identity of the perpetrator
17 of any unlawful conduct. There are numerous reasons why Mr. Lamberson’s IP
18 address may appear on plaintiff’s list that do not include copyright infringement,
19 such as others using the network, a mis-assigned IP address, spoofing of an IP
20 address by another bit torrent user, data capture errors, a viral bot operating
21 autonomously, the passing of an uncopyrightable bit, or errors in collection and
22 assessment of plaintiff’s purported data. See, for example, *Challenges and*
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24
25
26

1 *Directions for Monitoring P2P File Sharing Networks – or – Why My Printer*
2 *Received a DMCA Takedown Notice* by the University of Washington Department
3 of Computer Science and Engineering (Ex. 18). Plaintiff's investigators' data
4 capture methodologies do not account for any of these possibilities for false
5 positives or other errors, because their methodologies simply capture the available
6 data without any analysis of the local situation of any one identified IP address.
7 Plaintiff has no other corroborating witnesses to its claims of infringement against
8 Mr. Lamberson.
9

10
11 27. Plaintiff's tables attached to its complaints are un-attested, provide no
12 foundational evidence, do not identify any person who created the lists, do not
13 identify any software used to create the lists, and do not identify how the lists are
14 created. Numerous John Does who have now been identified have filed Answers
15 flatly denied ever hearing of Elf-Man, let alone copying it. Nevertheless, plaintiff
16 has proceeded to accept settlements and pursue default judgments against people
17 who may in fact be innocent of the copyright infringement allegations like Mr.
18 Lamberson is innocent, despite knowledge of the high risk of false positives
19 inherent in its investigative methodology.
20

21 28. On information and belief, plaintiff is using IPP Ltd, or IPP
22 International, (IPP), fka Guardaley Ltd of Germany as its "investigator." IPP and
23
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1 Guardaley are noted for flawed and inaccurate data harvesting techniques.
2 Guardaley is a defendant in a class action lawsuit in the District of Massachusetts,
3 Case No. 1:10-cv-12043 alleging Guardaley's commission of fraud in connection
4 with its barratrous relationship with a copyright owner and law firm in bringing
5 lawsuits based on faulty investigation in order to drive nuisance settlements.
6 Guardaley's "technology" that has apparently been used in this case as plaintiff's
7 only evidence has also been found fundamentally flawed by a German tribunal.
8 Guardaley was sued by the German law firm Baumgarten Brandt because Guardaley
9 did not reveal the flaws in its techniques to the law firm which hired it. The rulings
10 from the German court found that Guardaley was operating a honeypot, seeding its
11 clients' own works; that Guardaley's technology identifies as infringers those who
12 only inquired about the file; that its technology identifies as infringers those who
13 neither downloaded or uploaded; and did not identify how each IP address was
14 identified. (Ex. 19 and 20 as previously filed in the District of Colorado in Malibu
15 Media, LLC v. Fantalis et al., Case No.: 1:12-cv-00886-MSK-MEH). IPP is acting
16 in concert with plaintiff in its unlawful barratrous scheme. Plaintiff has provided no
17 witness in the United States as to the facts of its allegations of infringement against
18 any of the defendants in any of the Washington state *Elf-Man* cases.
19
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1 29. Plaintiff is operating this barratrous infringement lawsuit enterprise in
2 Washington without any certificate of authority to conduct business in the state. On
3 information and belief, plaintiff is paying for the “evidence” in its tables from IPP
4 (and/or the delinquent South Dakota Crystal Bay Corporation) and has agreed to
5 share proceeds of these matters with IPP (and/or the delinquent South Dakota
6 Crystal Bay Corporation) and those responsible for creation of the tables. Unless
7 enjoined, the plaintiff’s unlawful conduct is certain to continue.
8
9

10 **COUNTERCLAIM COUNT ONE**

11 Declaration of non-infringement

12
13 30. Mr. Lamberson repeats all of his Answer, Affirmative Defenses, and
14 Counterclaim as if stated here.
15

16 31. Mr. Lamberson has not infringed any of plaintiff’s exclusive rights in
17 *Elf-Man* and seeks a formal declaration of the same. This is an exceptional case
18 warranting an award of attorneys fees and costs to Mr. Lamberson.
19

20 **COUNTERCLAIM COUNT TWO**

21 Declaration of copyright invalidity and unenforceability

22 32. Mr. Lamberson repeats all of his Answer, Affirmative Defenses, and
23 Counterclaim as if stated here.
24
25
26

1 33. Plaintiff's has misused its alleged copyright, rendering it
2 unenforceable, and Mr. Lamberson seeks a formal declaration of the same. This is
3 an exceptional case warranting an award of attorneys fees and costs to Mr.
4 Lamberson.
5

6 **COUNTERCLAIM COUNT THREE**

7 Cancellation of U.S. Copyright Registration
8

9 34. Mr. Lamberson repeats all of his Answer, Affirmative Defenses, and
10 Counterclaim as if stated here.
11

12 35. Plaintiff's purported '286 Registration fails to satisfy the legal and
13 formal requirements for obtaining copyright.
14

15 36. Mr. Lamberson requests relief from the Court directing the U.S.
16 Copyright Office to cancel the '286 Registration.
17

18 **COUNTERCLAIM COUNT FOUR**

19 Defamation

20 37. Mr. Lamberson repeats all of his Answer, Affirmative Defenses, and
21 Counterclaim as if stated here.
22

23 38. Plaintiff has intentionally and recklessly named Mr. Lamberson in a
24 federal lawsuit that never should have been brought against him. Plaintiff has made
25 several published knowingly false statements in furtherance of that activity.
26

1 39. Mr. Lamberson has been damaged by plaintiff's intentional and
2 reckless defamatory activity.

3
4 **COUNTERCLAIM COUNT FIVE**

5 Consumer Protection Act

6 40. Mr. Lamberson repeats all of his Answer, Affirmative Defenses, and
7 Counterclaim as if stated here.

8
9 41. Plaintiff is engaging in a systematic, unlawful business scheme that
10 includes multiple commercial acts of defamation not in the public interest and
11 which will continue if not enjoined. Additionally, plaintiff has no certificate of
12 authority to conduct business in Washington.

13
14 42. Mr. Lamberson and others who have been falsely accused have been
15 damaged by plaintiff's unlawful scheme which is unlawful under the Washington
16 State Consumer Protection Act, RCW19.86.010 et seq. This is an exceptional case
17 warranting an award of multiple damages and attorneys fees and costs to Mr.
18 Lamberson. Defendant has notified the Washington State Attorney General of the
19 filing of this action, as required under statute.

20
21
22 **COUNTERCLAIM COUNT SIX**

23 Tortious Interference with Business Relationships

1 43. Mr. Lamberson repeats all of his Answer, Affirmative Defenses, and
2 Counterclaim as if stated here.

3
4 44. Plaintiff filed this action claiming to be a victim of bit torrent without
5 admitting its role in seeding the very work it claims was copied. Plaintiff sought
6 and received the right to issue Subpoenas to the ISP of Mr. Lamberson based on its
7 self-manufactured claims. Mr. Lamberson's ISP has communicated with him about
8 the Subpoenas and the existence of these Subpoenas is noted in Mr. Lamberson's
9 customer service files. Plaintiff had no right to force Mr. Lamberson's ISP to
10 respond to a Subpoena when plaintiff knew it was manufacturing its own claims,
11 not enforcing legitimate rights.
12

13
14 45. Plaintiff's activity has affected the relationship between Mr.
15 Lamberson and his ISP. He may not longer be entitled to discounts or promotional
16 offerings made to other customers about whom no subpoenas have been issued.
17 Plaintiff's activity is unlawful tortious activity interfering with Mr. Lamberson's
18 business relationships.
19
20

21 **WHEREFORE, Ryan Lamberson prays for:**

- 22 a. Dismissal of plaintiff's claims with prejudice;
23
24 b. An order that plaintiff shall be afforded no relief from its complaint
25 herein;
26

- 1 c. A declaration of non-infringement and injunctive relief;
- 2 d. An order to the U.S. Copyright Office to cancel plaintiff's purported
- 3 copyright registration;
- 4
- 5 e. Attorneys' fees and costs awardable under 17 U.S.C. Section 505;
- 6 f. Multiple damages and attorneys fees under the Consumer Protection
- 7 Act;
- 8
- 9 g. For any and all damages suffered by defendant;
- 10 h. A ruling prohibiting the testimony of Daniel Macea, Michael Patzer, or
- 11 any representative of IPP or Guardaley on the basis of lack of foundation,
- 12 inequitable conduct, and *Daubert* principals;
- 13
- 14 i. Sanctions pursuant to Fed. R. Civ. P. 11;
- 15
- 16 j. For post-judgment interest on the entire amount until paid in full; and
- 17
- 18 k. For such other and further relief as the Court may deem just.
- 19
- 20

21 DATED this 3rd day of January, 2014.

22 LEE & HAYES, PLLC

23

24

25

26

1 By: s/ J. Christopher Lynch

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12 *Counsel for Defendant Ryan Lamberson*

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of January, 2014, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Maureen C. VanderMay efile@vandermaylawfirm.com

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